

PETITION FOR ZONING VARIANCE 84-137-A  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1 B01 2 C 2 a to permit a window to tract boundary setback of 15 feet instead of the required 35 feet and 1 B01 2 C 6 (VB 6 b) to permit a window to property line setback of 10 feet instead of the required 15 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, or the following reasons: (indicate hardship or practical difficulty)

1 B01 2 C 2 6 to permit a minimum distance between the centers of facing windows of 20 feet in lieu of the required 40 feet.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: \_\_\_\_\_  
(Type or Print Name)

Legal Owner(s): Frederick DeFalco  
(Type or Print Name)

Signature: FREDERICK DE FALCO  
Signature

Address: 1928 MIDLAND RD. 21222  
(Type or Print Name)

City and State: BALTIMORE, MD. 21204  
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted: \_\_\_\_\_  
Name

City and State: \_\_\_\_\_  
City and State

Address: \_\_\_\_\_  
Address

Phone No.: \_\_\_\_\_  
Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of August, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 16th day of November, 1983, at 1:30 o'clock P.M.

Carl J. J...  
Zoning Commissioner of Baltimore County.

Mr. Frederick DeFalco  
1928 Midland Road  
Baltimore, Md. 21222

Gerhold, Cross & Etzel  
412 Delaware Avenue  
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this 30th day of October, 1983.

Arnold Jablon  
Zoning Commissioner

Petitioner Frederick DeFalco  
Petitioner's Attorney

Received by Nicholas B. Commodari  
Chairman, Zoning Plans Advisory Committee

RE: PETITION FOR VARIANCES : BEFORE THE ZONING COMMISSIONER  
NW/4 of "B" Ave., 200' SW of : OF BALTIMORE COUNTY  
Ross Ave., 15th District

FREDERICK DeFALCO, Petitioner : Case No. 84-137-A

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel

John W. Hession, III  
John W. Hession, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 3rd day of November, 1983, a copy of the foregoing Order was mailed to Mr. Frederick DeFalco, 1928 Midland Road, Baltimore, MD 21222, Petitioner.

John W. Hession, III  
John W. Hession, III

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon  
Zoning Commissioner Date: October 25, 1983

FROM: Norman E. Gerber, Director  
Office of Planning and Zoning

SUBJECT: Frederick DeFalco  
84-137-A

Please consider the minutes of the CRG of September 14, 1983, and the comments to the CRG from each of the participating agencies to be this office's comments.

Norman E. Gerber per J. Howell  
Norman E. Gerber  
Director of Planning and Zoning

NEG:JGH:cav

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 8, 1983

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

ofo

Nicholas B. Commodari  
Chairman

MEMBERS

Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Mr. Frederick DeFalco  
1928 Midland Road  
Baltimore, Maryland 21222

RE: Item No. 63 - Case No. 84-137-A  
Petitioner - Frederick DeFalco  
Variance Petition

Dear Mr. DeFalco:

The Zoning Plans Advisory Committee and the County Review Group (CRG) have reviewed the plans submitted with the above referenced petition. The following comments from the CRG have been substituted for those of the Zoning Plans Advisory Committee. They are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

As discussed with your surveyor, Mr. John Etzel, the proposed setbacks on lots 7 and 8 would be revised to indicate 40 feet from the property lines.

This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,  
Nicholas B. Commodari  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Gerhold, Cross & Etzel  
412 Delaware Avenue  
Towson, Maryland 21204

COUNTY REVIEW GROUP MEETING  
Wednesday, September 14, 1983

DEFALCO PROPERTY

COUNTY REVIEW GROUP - THOSE PRESENT\*

Gilbert S. Benson, Chairman - Dept. of Public Works  
Susan Carrell - Office of Planning  
Carl Richards - Office of Zoning  
Glenn Bittner - Health Department  
Bob Covahey - Developers Engineering Div.  
Michael Flanigan - Traffic Engineering  
Fred DeFalco - Developer  
John Etzel - Developer's Engineer

\*Attachment - List of interested citizens

The meeting was called to order at 9:00 a.m. by Mr. Benson, Chairman of the CRG, who introduced the Committee and stated the purpose of the meeting.

Mr. John Etzel, developer's engineer, presented the plan. It is proposed to develop this tract into 8 lots. Lots 4 and 8 will contain the two existing dwellings. Developer's engineer stated that this property was an existing pleasure club and all of the existing structures have been removed from this tract. Public water and sewer exist in B Avenue.

Susan Carrell presented written comments from the Office of Planning. The soils in this area have limitations, and mitigative measures must be addressed during the processing of this subdivision. The rear portion of Lots 1,2,3,4 have hydric soils and building setback line should be located along this soil line. Developer's engineer to note on the plan whether the existing garage on this property will remain or be razed. The developer's engineer to indicate on the plan the orientation of the proposed and existing houses to be located on Lots 5,6,7,8. Panhandles as shown on the plan to be a minimum of 20' wide and to be improved in accordance with County standards. Maintenance agreement to be recorded along with a record plat. It was recommended that Lots 5 and 6 be restudied due to the orientation of the dwellings.

Carl Richards presented written comments from the Office of Zoning. Approval by Zoning is subject to the variance petition being granted. This petition was filed on August 19, 1983. Developer's engineer to note the height of buildings on this plan. Developer to see section within Zoning comments of 8/14/83 with reference to accessory note.

DEFALCO PROPERTY

-2-

September 14, 1983

Fire Department submitted written comments stating that a cul-de-sac or "T" turnaround must be provided at the end of this street for emergency vehicles. Fire hydrant is required at end of B Avenue. Panhandle drives must be constructed in order to accommodate emergency vehicles.

Mike Flanigan presented written comments from Traffic Engineering. The plan appears to be satisfactory as it pertains to this department.

Glen Bittner presented written comments from Health Department. Public water and sewer exist and therefore it is recommended that this be approved.

Bob Covahey presented written comments from Developers Engineering Division. Storm water management is exempt provided storm drain outfall is provided. B Avenue is an existing road and shall be improved with an ultimate 24' width paving on a 50' right-of-way. Developer shall be responsible for engineering and cost of proposed improvements for this frontage. Status of this right-of-way to be verified; developer's engineer should contact the Bureau of Land Acquisition concerning the status of this right-of-way. Public water and sewer exists within B Avenue. Street lights and fire hydrants will be developer's full cost.

CITIZENS' COMMENTS

Ms. Addie Phillips expressed concern about the close proximity of the proposed lots or buildings to her existing home.

Developer stated that Lots 5 and 6 would be restudied concerning this plan and the proposed dwellings would be located as far as possible from the property line.

It was the general feeling of the citizens present that a request for a variance of lot size was not a satisfactory answer to their concerns and requested that the Zoning Office not grant the variances. The citizens were advised that the hearing would be held in 60-90 days and the property would be posted and they could attend the hearing.

Written comments from the following agencies were given to the developer and developer's engineer: Zoning, Planning, Fire Department, Traffic, Health, Developers Engineering Division.

Developer's engineer was requested to make several changes in red on the plan as asked by the County agencies. The Department of Public Works and the Office of Planning approved and signed the plan.

The meeting was adjourned at 10:00 a.m. L.S.B.







Project #83130  
DeFalco Property  
Page 3  
September 12, 1983

**HIGHWAY COMMENTS: (Cont'd)**

Private driveway entrances shall conform with Baltimore County Standard Detail Plate R-15, dated 1977 for "Typical Driveway Entrance from Road without Curb and Gutter."

"No Parking" signs shall be posted prohibiting parallel parking on 24-foot wide streets and within the turnaround area.

Panhandles shall be a minimum of 20 feet in width to serve one lot and a minimum of 10 feet in width per lot where two or more lots are involved. Within the metropolitan area where public water and sewer service is available the minimum panhandle width for two or more lots is 12 feet per lot. The Developer shall be required to provide a paved panhandle drive where more than one lot is to be served prior to occupancy.

Covenants must be recorded prior to or along with the recording of the plat establishing a cross easement over the panhandles for access over and maintenance of the common panhandle driveway and for installation and maintenance of the private water and/or sewer connections where applicable.

**STORM DRAINS, SEDIMENT CONTROL AND STORM WATER MANAGEMENT COMMENTS:**

The Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and rights-of-way - both onsite and offsite - and the deeding in fee to the County of said rights-of-way. Preparation of all construction, rights-of-way and easement drawings, engineering and surveys, and payment of all actual construction costs including the County overhead both within and outside the development, are also the responsibilities of the Developer.

The Developer must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Developer.

A drainage study will be required to determine if public storm drains will be required in conjunction with this subdivision.

An exemption from storm water management requirements is recommended for this subdivision providing that the runoff from the site is adequately conveyed to Old Road Bay.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Project #83130  
DeFalco Property  
Page 4  
September 12, 1983

**STORM DRAINS, SEDIMENT CONTROL AND STORM WATER MANAGEMENT COMMENTS: (Cont'd)**

Drainage studies will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

In accordance with Baltimore County Council Grading Ordinance (Bill No. 10-77) a grading plan shall be approved and a Performance Bond posted prior to issuance of a grading permit. The number of square feet of land disturbed shall be indicated on the sediment control drawing.

The Developer shall be responsible to stabilize the sidewalk areas and supporting slopes on all road rights-of-way following completion of the initial grading of the boxed-out subgrade. The stabilization shall be accomplished within the nearest period of optimum seeding as established in the Baltimore County Sediment Control Manual. Minimum acceptable stabilization measures will be as specified in the Baltimore County Sediment Control Manual under "Critical Area Stabilization (With Semi-Permanent Seedings)".

Failure by the Developer to accomplish the stabilization as aforementioned will result in the termination of all processing phases of this development.

The Developer shall provide a minimum 10-foot drainage and utility easement along all bordering property lines which are not adjacent to County rights-of-way or storm drain reservations, unless a similar easement has previously been provided along the property lines of the adjacent subdivision.

The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential development.

**WATER AND SANITARY SEWER COMMENTS:**

Both public water mains and public sanitary sewers exist to serve this property.

Water and sanitary sewer house connections shall be installed by a utility contractor prior to the road improvements and shall be included in the Public Works Agreement.

This property is subject to Water and/or Sewer System Connection Charges based on the size of water meters utilized.

The total Water and/or Sewer System Connection Charge is determined, and payable, upon application for the Plumbing Permit. This Charge is in addition to the normal front foot assessment and permit charges.

Project #83130  
DeFalco Property  
Page 5  
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**WATER AND SANITARY SEWER COMMENTS: (Cont'd)**

The Developer is responsible for the cost of capping or plugging any existing house connection not used to serve the proposed site.

The Developer will be given credit for one System Connection Charge for each existing house which is now connected into the public services.

Additional fire protection appears necessary for this subdivision. The Developer's engineer must contact the Fire Protection Division of the Baltimore County Fire Department for exact requirements.

\*\*\*\*\*

The Plan may be approved subject to the above comments.

EDWARD A. McDONOUGH, P.E., Chief  
Developers Engineering Division

EAH:REC:SS

cc: File

**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

TO: Brooks, H. Stafford Date: September 12, 1983  
FROM: J. Robert Powell  
SUBJECT: ENVIRONMENTAL EFFECTS REPORT - DeFalco Property  
CRG Meeting, September 14, 1983, 9 a.m.

**Plan Review Notes:**

- Eight lots, single family dwellings, on 2.8 acres (two existing dwellings).
- Public water and sewer
- Not in reservoir watershed.
- Othello soils (Ot) located onsite are classified as hydric soils.
- No streams onsite, however, property fronts on Old Road Bay (tidal).
- Storm Water Management not required.
- Proposed impervious area 0.51 acres, 18% of site.

**Responses:**

The Environmental Effects Report is approved, subject to the following conditions.

- No development is allowed in Othello soils (Ot), therefore, the minimum building setback boundaries from the rear of the property should be changed to reflect the above restriction.
- The owner agrees in writing to comply with the following Best Management Practices at this site:
  - All areas except that used for buildings, sidewalks and paved parking will be planted with vegetated cover and/or landscaped as soon as possible after final grading and maintained in such condition.
  - Dirt and debris accumulating on private roads and parking lots will be removed according to the following schedule: May through October, concurrent with grass mowing; November through April, monthly.
  - Snow removal will be by mechanical means except in severe snow and ice conditions, when deicing compounds may be used.
  - Application of fertilizers, herbicides and pesticides will not exceed recommendations of the University of Maryland Cooperative Extension Service.
  - Filling will not occur in grassed or lined drainage ditches or swales.

JRP:pb

**BALTIMORE COUNTY, MARYLAND**

TO: Mr. Robert Morton Date: September 7, 1983  
FROM: C. Richard Moore  
SUBJECT: C.R.G. COMMENTS

PROJECT NAME	DeFalco Property	C.R.G. PLAN	X
PROJECT NUMBER & DISTRICT		DEVELOPMENT PLAN	
LOCATION	"R" Avenue W. of Ross Avenue	RECORD PLAT	

The plan appears to be satisfactory.

C. Richard Moore  
Acting Deputy Director  
Traffic Engineering

CRM/GNU/cem

BALTIMORE COUNTY  
DEPARTMENT OF PERMITS & LICENSES  
TOWSON, MARYLAND 21204  
494-3900

TED ZALESKI JR.  
DIRECTOR  
Mr. William E. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

September 21, 1983

Dear Mr. Hammond  
Comments on Item # 63 Zoning Advisory Committee Meeting are as follows:

Property Owners: Frederick DeFalco  
Location: NW/S Avenue "B" 200' S/W Ross Avenue  
Existing Zoning: D-1, S-5  
Proposed Zoning: Variance to permit a window to tract boundary setback of 15' in lieu of the required 35' and to permit a window to property line setback of 10' in lieu of the required 15'.

The items checked below are applicable:

- X A. All structure shall conform to the Baltimore County Building Code 1983/ Council Bill 1-82 known as Maryland's Homeowner's Construction Act and other applicable Codes.
- X B. A building and other miscellaneous permits shall be required before beginning construction.
- X C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.
- D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.
- E. An exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'4" of lot lines. A firewall is required if construction is on the lot line, see Table 101, Item 2, Section 101 and Table 102.
- F. Requested variance conflicts with the Baltimore County Building Code, Section/s \_\_\_\_\_.
- G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed complies with the height/area requirements of Table 505 and the required construction classification of Table 101.
- I. Comments: \_\_\_\_\_

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit.  
For further information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,  
Charles E. Burdick, Chief  
Plans Review

CEB:rsj  
FWM 01-82

COUNTY REVIEW GROUP  
COMMENTS ON PROPOSED SUBDIVISION PLANS  
BALTIMORE COUNTY DEPARTMENT OF HEALTH

September 7, 1983  
Date

DeFalco Property  
Subdivision Name, Section and/or Plat

Frederick DeFalco Developer and/or Engineer  
Old Road Bay (2 existing) Corbold, Cross and ET-01  
Watershed No. of Lots 8 Total Acreage 2.8 Public Public  
or Units Water Sewer

**COMMENTS ARE AS FOLLOWS:**

- Soil percolation tests are required; a minimum of two test are required within a designated 10,000 square foot sewage disposal reserve area. For further information regarding these requirements, contact this office at 494-2762.
- Soil percolation test have been conducted. Revised plans, \_\_\_\_\_ must be submitted prior to approval of plat, \_\_\_\_\_ are not required and the plat can be approved as submitted. Contact this office for more complete information, 494-2762.
- Public sewers \_\_\_\_\_, public water \_\_\_\_\_, must be utilized and/or extended to serve the property.
- A Hydrogeological Study and Environmental Effects Report for this subdivision, \_\_\_\_\_ must be submitted, \_\_\_\_\_ is incomplete and must be revised, \_\_\_\_\_/have been reviewed and approved.
- A Water Appropriation Permit Application, \_\_\_\_\_ must be submitted, \_\_\_\_\_ has been submitted. NOTE: Greater than 33 lots necessitates a public hearing with Water Resources Administration as part of the permit process.
- It is recommended the plan, \_\_\_\_\_ be approved as submitted, \_\_\_\_\_ as submitted subject to the following conditions noted: in the attached plan dated September 12, 1983.
- It is recommended this plan not be approved at this time. See revisions and/or comments.

REVISIONS AND/OR COMMENTS: N/A

SS 783R

**BALTIMORE COUNTY PUBLIC SCHOOLS**

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: August 29, 1983

Z.A.C. Meeting of: August 30, 1983

RE: Item No: 55, 56, 57, 58, 59, 60, 61, 62 & 63  
Property Owner:  
Location:  
Present Zoning:  
Proposed Zoning:

District:  
No. Acres:

Dear Mr. Hammond:

The above mentioned items have no adverse effect on student population.

Very truly yours,  
Wm. Nick Petrovich, Assistant  
Department of Planning

NNP/bp



IN RE: PETITION ZONING VARIANCES  
NW/4 of "B" Avenue, 200' SW of  
Ross Avenue - 15th Election  
District  
Frederick DeFalco,  
Petitioner  
BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 84-137-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests variances to permit in effect setbacks of 15 feet and ten feet between buildings and boundary lines. The purpose of the request is to permit development of the subject parcel of property, as more fully described on Petitioner's Exhibit 1.

The Petitioner appeared and testified, as did John Etzel, the Petitioner's surveyor. Protestants also appeared and testified.

Testimony indicated that the property in question is zoned D.R.5.5. The property was purchased by the Petitioner in May, 1983 with the intent to subdivide. The property was used as a pleasure club, but the Petitioner did not intend to maintain that use. He proceeded to raze the main building but two other buildings remained which needed extensive renovation. The Petitioner proceeded to subdivide, as described on Petitioner's Exhibit 1, and to sell off various lots. The Petitioner proposes to sell the lots as they are shown and cannot force how or in what style any of the homes will be built. He, therefore, needs the variances to protect himself and present and future contract purchasers that each of the lots will not be limited as to the size and style of home that can be built. The Petitioner testified that he could develop the property into approximately 14 lots that will meet all of the Baltimore County Zoning Regulations (BCZR) as to lot size. He intended and still intends to allow for eight lots, which in his opinion will allow for lot sizes more in keeping

with the existing lots adjacent to his property and in the general neighborhood. The homes as defined by the envelopes found on Petitioner's Exhibit 1 also would be in line with the size of the homes found in the area.

The Petitioner is requesting setbacks of 15 feet rather than 35 feet from window to tract line for Lots 1, 5, and 7; variances of ten feet rather than 15 feet from window to interior property line between Lots 7 and 8, 5 and 6, 3 and 4, 2 and 3, and 1 and 2; and a minimum distance of 20 feet rather than the required 40 feet measured from window to window if windows are placed on line with other windows in homes adjoining the aforescribed lots.

In effect, the Petitioner wants to be able to have homes built on the lots without the attendant problem of window to property line or window to window setback requirements. The reason the Petitioner comes before the Zoning Commissioner for the above variances is that the subdivision is not covered by Section 1802.3.A.1. and 2., BCZR, in that it was not an existing residential subdivision at the time of the adoption of the regulations nor is it too small in gross area to accommodate six dwelling or density units under Section 1802.3.A.3., BCZR. Therefore, the Petitioner is required to meet the bulk regulations delineated under Section 1801.2.C.2., BCZR.

If the Petitioner was to relocate the envelopes as proposed, he would have to reduce the size of the lots in order to meet density and re-route a request for re-development of the parcel. It is obvious that if the variances were not to be granted, smaller homes not in keeping with the neighborhood would be the rule. Eddie Phillips, a Protestant whose property is on the water's edge and adjacent to Lot 7, testified that she was opposed to the variances because of the noise and congestion the proposed development would cause. The problems associated with the avalanche of people resulting from the development would result in severe congestion and invasion of privacy of those who already live there. She believes that the Petitioner would not be able to build more homes if that was his alternative.

May Goodman, another neighbor, agreed with Mrs. Phillips, as did George W. Shiflett. Mr. Shiflett's property adjoins Lot 1, and he does not believe that 30 feet between his house and the proposed house for Lot 1 is a sufficient distance. Mr. Shiflett's house apparently is 15 feet from the property line between Lot 1 and his house.

The issues are significant to both sides. It is understood why the Protestants would argue against the proposed development which would by its very nature intrude in the quiet, serene life they find on the water's edge. On the other hand, the Petitioner has a financial investment that he intends to fulfill and take advantage of.

The Petitioner points out that if the variances were allowed and the development proceeds according to plan, he will be required to widen and improve Avenue B, which services the proposed development and Mr. Shiflett. Therefore, any increase in resulting traffic would be better served and access improved. The Petitioner also testified that he sold Lot 1 in June, 1983, contingent on the variances requested herein being granted.

The Petitioner seeks relief from Sections 1801.2.C.2. and 1801.2.C.6. (V.B.6.b.), pursuant to Section 307, BCZR.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. Difiete, 448 A.2d 771 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Mongony v. Revillaqua, 432 A.2d 661 (R.I., 1981).

Therefore, Section 1801.2.C.2. and 6. must be enforced as it is clear and certain as to its meaning and intent. The zoning regulations, however, permit a variance, pursuant to certain conditions as delineated in Section 307. To permit a variance to the "area" requirements of Section 1801.2.C.2. and 6., the variance must be judged under the "practical difficulties" test, i.e., by looking to such factors as the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein; whether, if the restriction upon the petitioner's property was removed, such removal would seriously affect such neighboring property and uses; whether, if the restriction is not removed, the restriction would create practical difficulty or unreasonable hardship for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the regulation.

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. of Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

- whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson, supra.

It is clear that the property has sufficient size for 15.4 lots and equally clear that the Petitioner will not utilize the property to the full extent permitted. Although Petitioner's Exhibit 1 allows for larger homes than allowed without variances, it does appear from the plan that the lot and dwelling sizes in the neighborhood approximate those proposed by the Petitioner. It is significant to note that testimony indicated that the house owned by Mr. Shiflett is 15 feet from the property line with Lot 1 and that the Petitioner is only requesting an equal setback. The particular setback requested is not unusual to the neighborhood nor out of line with Mr. Shiflett's house.

It is clear from the testimony that if the variances were to be granted, such use as proposed would not be contrary to the spirit of the regulations and would not result in substantial detriment to the public good. After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the instant variances were not to be granted. It has been established that the requirement the Petitioner seeks relief from here would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variances requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variances requested should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25<sup>th</sup> day of November, 1983, that the Petition for Variances as aforescribed be and is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

- The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- The Petitioner must abide by the comments submitted and made a part of the Baltimore County Zoning Plans Advisory Committee by the County Review Group, which are and shall be adopted in their entirety by this Order.

*[Signature]*  
Zoning Commissioner of  
Baltimore County

CARL L. GERHOLD  
PHILIP F. CRISSE  
JOHN F. ETZEL  
WILLIAM D. LURICH  
GORDON T. LANGDON

GERHOLD, CROSS & ETZEL  
Registered Professional Land Surveyors  
412 DELAWARE AVENUE  
TOWSON, MARYLAND 21204  
823-4470

SHERRILL  
PAUL H. HOLLANDER  
FRED H. HOLLENDERS

August 19, 1983

Zoning Description

All that piece or parcel of land situate, lying and being in the Fifteenth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same in the center of "B" Avenue at a point distant South 64 3/4 degrees East 200 feet measured along the center of "B" Avenue from the west side of Ross Avenue, thence South 64 3/4 degrees West, binding for a part in the center of "B" Avenue, 633 feet more or less to the waters of Old Road Bay, thence binding on the waters of Old Road Bay, North 0 degrees 48 minutes West 229.6 feet, thence leaving the waters of Old Road Bay and binding on the property lines of the petitioner herein, the two following courses and distances viz: North 64 3/4 degrees East 538 feet more or less and South 25 1/4 degrees East 209 feet to the place of beginning.

Containing 2.8 Acres of land more or less.

Being the property of the petitioner herein and shown on a plat filed with the Baltimore County Zoning Department.



PETITION FOR VARIANCES

15th Election District

ZONING: Petition for Variances  
LOCATION: Northwest side of "B" Avenue, 200 ft. Southwest of Ross Avenue  
DATE & TIME: Wednesday, November 16, 1983 at 1:30 P.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variances to permit a window to tract boundary setback of 15 ft. instead of the required 35 ft., to permit a window to property line setback of 10 ft. instead of the required 15 ft. and to permit a minimum distance between the centers of facing windows of 20 ft. in lieu of the required 40 ft.

The Zoning Regulations to be excepted as follows:  
Sections 1801.2C.2.a, 1801.2C.6 (VB 6 b) and 1801.2C.2.b - distance of window to property line, track boundary and distance between windows in D.R. 5.5 zone  
All that parcel of land in the Fifteenth District of Baltimore County

Being the property of Frederick DeFalco, as shown on plat plan filed with the Zoning Department.

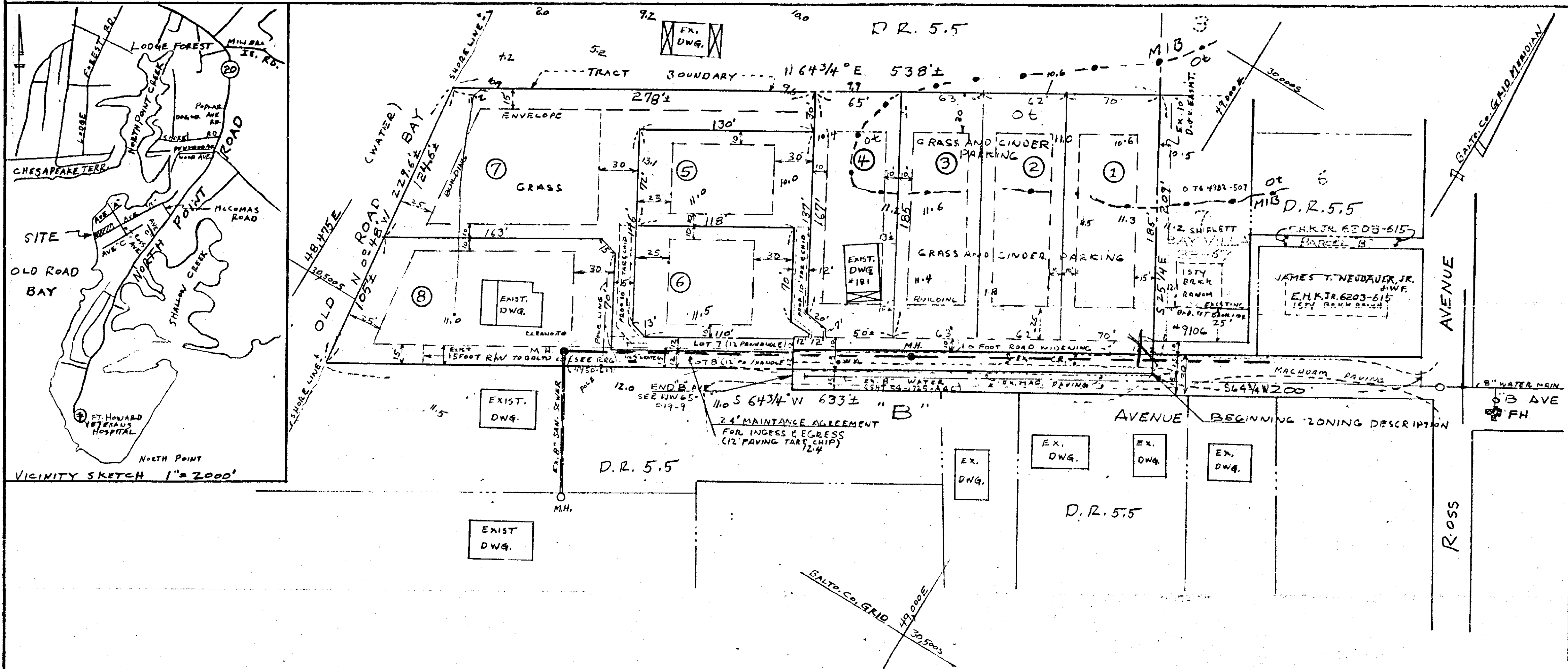
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF  
ARNOLD JABLON  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY









# PLAT SHOWING

SUBDIVISION OF DEFALCO PROPERTY  
ON  
"B" AVENUE  
LOCATED IN 15<sup>TH</sup> DIST. BALTO CO. MD  
ALSO

PLAT TO ACCOMPANY ZONING PETITION  
FOR A VARIANCE FROM SECTION 1801.2.C.2.4  
TO PERMIT A WINDOW TO TRACT BOUNDARY SETBACK OF 15'  
INSTEAD OF REQUIRED 35' AND 1801.2.C.6 (VB.6.b) TO PERMIT  
A WINDOW TO PROPERTY LINE SETBACK OF 10' INSTEAD OF REQUIRED  
15' AND 1801.2.C.2.6 TO PERMIT A MINIMUM DISTANCE BETWEEN  
THE CENTERS OF FACING WINDOWS OF DIFFERENT DWELLINGS OF  
20' IN LIEU OF THE REQUIRED 40'

DEED REF: E.H.K. JR. No. 6540-257  
PROPERTY No. 15-11-350970  
ZONED D.R. 5.5  
AREA = 2.8 ACRES

DEVELOPER-OWNER  
FREDERICK A. DEFALCO  
1928 MIDLAND ROAD  
BALTIMORE MD. 21222  
PHONE: 288-1700

FIG. NO. 3

NO KNOWN CRITICAL AREAS, ARCHEOLOGICAL  
SITES, ENDANGERED SPECIES  
HABITAT OR HAZARDOUS MATERIALS  
OR HISTORIC BUILDINGS  
A.D.T.S 10.4 x 8 = 83.2

SOILS  
M1B - MATTAPEX SILT LOAM (2-5% slopes)  
Ot - OTHELLO SILT LOAM

GRADING RESTRICTED TO HOUSE SITES  
NOTE:  
FLOOR ELEVATIONS INCLUDING  
BASEMENT TO BE 10.4' OR HIGHER.  
NO STREAMS  
NO FLOOD PLAINS  
EXISTING BLDGS AS SHOWN

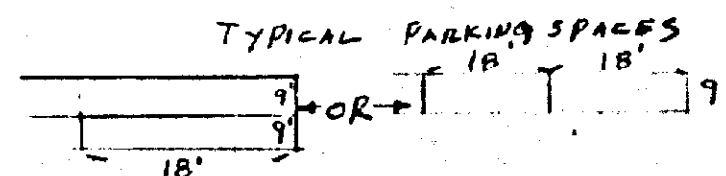
FOR 8" SANITARY SEWER SEE DWG. No. 65-184  
FOR 8" WATER LINE SEE DWG. No. 54-1725

NOTE: EXISTING WATER SERVICE  
PIPE ALIGNMENT TO EXISTING  
DWLG ON LOT 8 IS UNKNOWN

ZONED D.R. 5.5  
GROSS AREA = 2.8 AC ±

OPEN SPACE REQUIRED (WAVEL HAS BEEN  
1.06 x 2.8 AC = 1.68 AC ± (REQUESTED)  
2 PARKING SPACES PER LOT (9x18')  
DENSITY = 8 LOTS ÷ 2.8 = 2.9  
LOTS ALLOWED = 2.8 x 5.5 = 15.4 LOTS — No. of LOTS SHOWN 8  
15<sup>TH</sup> ELECTION DISTRICT  
COUNCIL MANIC DIST. 7  
CENSUS TRACT 4519  
WATER SHED 35  
SUBSEWERSHED 43  
LOTS ARE FOR SALE  
PUBLIC WATER & SEWER  
AVAILABLE IN AVENUE "B"

SOIL TYPES AND LIMITATIONS			
AREA	SOIL TYPE	HOME SITE (3 STORIES OR LESS WITH BASEMENTS WITHOUT BASE)	STREETS AND PARKING LOTS
2.5	M1B	MODERATE	SLIGHT
0.3 AC	Ot	SEVERE	SEVERE
			MODERATE - MODERATE HIGH WATER TABLE
			SEVERE - HIGH WATER TABLE - POOR NATURAL DRAINAGE



PETITIONER'S  
EXHIBIT 1



SCALE: 1" = 50' AUGUST 19, 1982  
AUGUST 8, 1983  
GERHOLD, CROSS & ETZEL  
Registered Professional Land Surveyors  
412 Delaware Avenue  
TOWSON, MARYLAND 21204

823-4470